

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION
302 W. WASHINGTON STREET, ROOM E306

EX PARTE OR LATE FILED

ORIGINAL

INDIANAPOLIS 46204

March 24, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RECEIVED

MAR 27 2000

FCC MAIL ROOM

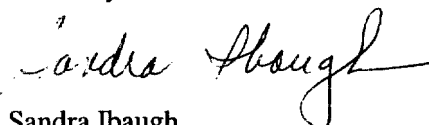
Re: Ex parte filing in CC Docket 98-141/ASD File No. 99-49

Dear Ms. Salas:

The attached letter was sent to Mr. Lawrence E. Strickling, Chief of the Common Carrier Bureau today. Please enter it into the record of the above referenced proceeding.

If you have any questions, please call me at 317-232-2523.

Cordially,



Sandra Ibaugh
Director of Telecommunications

Attachment

CC: Mr. Lawrence Strickling

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Mr. Lawrence Strickling
Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., 5th Floor
Washington, DC 20554

Re: CC Docket 98-141, ASD File 99-49

Dear Mr. Strickling:

The Indiana Utility Regulatory Commission ("IURC") submits this letter in response to the recent request by SBC Communications, Inc. ("SBC")¹ for a modification or waiver of the conditions imposed by the Federal Communications Commission ("FCC") in its Order approving SBC's merger with Ameritech.² Specifically, SBC seeks relief that would allow the company's ILECs rather than its advanced services affiliates to own: 1) combination voice/ADSL cards in Digital Loop Carriers (DLCs) located in remote terminals and 2) ATM switches (which SBC calls Optical Concentration Devices or "OCDs") to be deployed in SBC's central offices.

The IURC does not endorse or oppose the specific modification/waiver sought by SBC. However, the IURC is concerned about the lack of information in SBC's February 15 letter regarding how this modification/waiver, if approved by the FCC, will be implemented. Therefore, if the FCC finds that it is in the public interest to grant a modification or waiver of the separate affiliate requirements in the SBC/Ameritech Merger Conditions, then the IURC encourages the FCC to consider the following recommendations.

1. Any modification or waiver of the Merger Conditions should not limit CLECs to the particular advanced services that SBC has chosen for its affiliates or make alternative technologies difficult or prohibitively expensive. It appears that the DLC equipment which SBC proposes to locate in new remote terminals will only support ADSL, the sole "flavor" of xDSL chosen by SBC and its advanced services affiliates. SBC's decision to limit deployment to technology that only supports ADSL services could effectively limit the ability of other carriers to deploy other types of xDSL services to end users in the company's 13-state region. The IURC believes that it is in the public interest to encourage the deployment of a wide range of broadband capabilities, not just ADSL, and thus is concerned about the effect of SBC's request for a modification or waiver of the Merger Conditions. In order to better understand the potential outcomes of SBC's request, the IURC recommends the FCC require SBC to publicly file additional information within 15 days regarding: 1) whether and what types of xDSL service will be supported for CLECs in the future; and 2) when additional types of xDSL might be supported.

¹ Letter from Paul K. Mancini, Vice President and Assistant General Counsel, SBC, to Lawrence E. Strickling, Chief of the Common Carrier Bureau, FCC (Feb. 15, 2000).

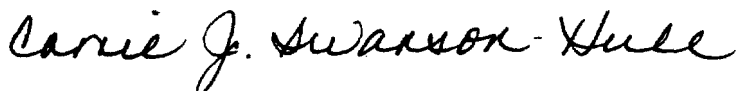
² CC Docket No. 98-141, Memorandum Opinion and Order, FCC 99-279, Appendix C (rel. Oct. 8, 1999) ("Merger Order" and "Merger Conditions," respectively).

2. If the FCC approves SBC's request and allows SBC ILECs to own the combination voice/data ADSL cards in the remote terminals, which will then be offered to CLECs as part of a new unbundled network element (UNE), the FCC should clarify that SBC must offer the new UNE at TELRIC-based rates.³ State commissions should also be able to require SBC to file TELRIC-based cost information for the new UNE in any current or future arbitration or generic cost case.
3. The terms and conditions of SBC's proposal, as described in the draft interconnection agreement appendix submitted with the SBC's February 15 letter and as revised by the company's March 10 reply comments, should be reviewed and approved by the FCC prior to a modification or waiver of the Merger Conditions. These terms and conditions should be available to all CLECs during the entire term of the modification/waiver, and the actual interconnection agreement language should be posted on the FCC's Merger Compliance Oversight Team web site.⁴ The IURC believes a minimum set of standard terms and conditions that have been reviewed by a regulatory agency must be publicly available prior to the approval of the requested modification/waiver.⁵
4. Any waiver or modification of the Merger Conditions should be interim. The IURC recommends a term of six months. At the end of this term, the FCC should solicit additional comments from parties regarding the effects of the modification/waiver, and whether it should be extended or terminated. The IURC believes this approach balances SBC's request for an expedited decision against the desire of many CLECs to prevent any permanent, anti-competitive outcomes from occurring.

The IURC provides these recommendations in response to the FCC's desire to work with State commissions on an informal basis to ensure SBC's compliance with the Merger Conditions.⁶ The IURC hopes this feedback will help the FCC determine if and how SBC's request should be implemented.

Please feel free to contact Sandra Ibaugh, Director of Telecommunications, at 317-232-2523 if you have any questions or require additional information.

Cordially,



Camie J. Swanson-Hull
Commissioner

CC: Anthony Dale
Carol Matthey

³ The IURC could not find any information regarding how the rates for the new UNE would be established in SBC's February 15 letter or the proposed interconnection agreement language.

⁴ The IURC believes that these terms and conditions would constitute the minimum offering available to CLECs, and would not preclude SBC and another carrier from voluntarily negotiating other terms and conditions.

⁵ The IURC believes that a minimum set of generally available terms and conditions would prevent disputes between parties regarding the terms and conditions of the modification/waiver, if implemented, and assist the efforts of state commissions to review interconnection agreements pursuant to Section 252(e) of TA-96. The IURC refers the FCC to our February 18, 2000 request for clarification of the collocation terms and conditions SBC is required to offer CLECs pursuant to the FCC's First 706 Order and Paragraphs 37 and 38 of the Merger Conditions.

⁶ CC Docket No. 98-141, Memorandum Opinion and Order, FCC 99-279, Appendix C (rel. Oct. 8, 1999), Paragraph 506.